

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT  
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, et al.,

Debtors.<sup>1</sup>

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**DECLARATION OF JOHN J. HUGHES, III IN SUPPORT OF AMBAC  
ASSURANCE CORPORATION, FINANCIAL GUARANTY INSURANCE  
COMPANY, ASSURED GUARANTY CORP., ASSURED GUARANTY  
MUNICIPAL CORP., AND THE BANK OF NEW YORK MELLON'S  
REPLY IN SUPPORT OF THEIR MOTION CONCERNING APPLICATION OF  
THE AUTOMATIC STAY TO THE REVENUES SECURING THE CCDA BONDS**

I, John J. Hughes, III, hereby declare, pursuant to 28 U.S.C. § 1746:

1. I am an attorney with the law firm Milbank LLP, counsel to Ambac Assurance Corporation ("Ambac") in the above-captioned proceedings ("Proceedings"). I am admitted *pro hac vice* to practice before this Court in the Proceedings.

2. I submit this declaration in support of *Ambac Assurance Corporation, Financial Guaranty Insurance Company, Assured Guaranty Corp, Assured Guaranty Municipal Corp., and The Bank Of New York Mellon's Reply in Support of Their Motion Concerning Application of the*

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<sup>1</sup> The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the "Commonwealth") (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

*Automatic Stay to the Revenues Securing the CCDA Bonds* (the “Reply”). Capitalized terms not defined herein are defined as they are in the Reply.

3. On April 23, 2020, the Government Parties and Ambac Assurance Corporation, Assured Guaranty Corp., Assured Guaranty Municipal Corp., National Public Finance Guarantee Corporation, Financial Guaranty Insurance Company, The Bank of New York Mellon, and U.S. Bank Trust National Association executed a stipulation entitled “Stipulation Regarding Authenticity of Documents in Connection with Lift-Stay Motion” (the “Authenticity Stipulation”). Attached hereto as Exhibit 20 is a true and correct copy of the Authenticity Stipulation. The Authenticity Stipulation provides that (subject to certain exceptions) no party to the Authenticity Stipulation will “contest the authenticity of any” document under Rule 901 of the Federal Rules of Evidence if the document bears, *inter alia*, the Bates prefix “CW\_STAY” or “CCDA\_STAY.” See Ex. 20 at 3. The Authenticity Stipulation also provides that (subject to certain exceptions) the parties will not dispute that produced documents authored or otherwise created by the Government Parties or certain third-party banks meet the requirements of Federal Rules of Evidence 803(6)(A)-(D). *Id.* at 4.

#### **I. DOCUMENTS PRODUCED IN DISCOVERY.**

4. On February 20, 2020, Ambac served eight document requests on AAFAF and the Oversight Board (the “CCDA Document Requests”). See, e.g., Email from J. Hughes (Milbank) to E. McKeen (O’ Melveny & Meyers), *et al.* (February 20, 2020, 21:50 EST).

- a. Attached hereto as Exhibit 21 is a true and correct copy of the email from J. Hughes, Esq. to E. McKeen, Esq., *et al.*, dated February 20, 2020, 21:50 EST.

5. To date, AAFAF has produced over 14,000 pages in response to the CCDA document requests (the “AAFAF Produced Documents”). CCDA\_STAY0000001-CCDA\_STAY0014306.

6. Ambac has also received 134 documents from The Bank of New York Mellon, in its capacity as trustee for the CCDA bonds (the “BONY Produced Documents,” and, together with the AAFAF Produced Documents, the “Produced Documents”).

7. I, and attorneys and staff working under my supervision, have used computer software that is capable of running word searches through the extracted text associated with Produced Documents.

**A. The Produced Documents Use the Word “Surplus” in Connection With One Specific Account.**

8. The Produced Documents refer to the GDB -9758 Account with the word “Surplus.” Specifically, transmittal authorization documents for the GDB -9758 Account identify that account as the “Room Tax-Concentration *Surplus*” Account. CCDA\_STAY0004005; CCDA\_STAY0004297 – CCDA\_STAY0004331.

- a. Attached hereto as Exhibit 22–37 are true and correct copies of transmittal authorization documents for GDB -9758 Account which describe the account as “Room Tax – Concentration Surplus”:

Exhibit Number	Bates Numbers
22	CCDA_STAY0004005
23	CCDA_STAY0004008
24	CCDA_STAY0004014
25	CCDA_STAY0004017
26	CCDA_STAY0004036 – CCDA_STAY0004037
27	CCDA_STAY0004147 – CCDA_STAY0004165
28	CCDA_STAY0004166 – CCDA_STAY0004179
29	CCDA_STAY0004180 – CCDA_STAY0004187

Exhibit Number	Bates Numbers
30	CCDA_STAY0004188 – CCDA_STAY0004201
31	CCDA_STAY0004203 – CCDA_STAY0004214
32	CCDA_STAY0004215 – CCDA_STAY0004230
33	CCDA_STAY0004245 – CCDA_STAY0004277
34	CCDA_STAY0004278 – CCDA_STAY0004286
35	CCDA_STAY0004287 – CCDA_STAY0004290
36	CCDA_STAY0004291 – CCDA_STAY0004293
37	CCDA_STAY0004297 – CCDA_STAY0004331

9. A word search of the extracted text associated with the Produced Documents, and a review conducted by Milbank attorneys, revealed that no other Produced Documents similarly use the word “Surplus” to describe any specific account number for an account in the CCDA flow of funds<sup>2</sup> other than the GDB -9758 Account. See CCDA\_STAY00000001-CCDA\_STAY0014306; FOMB\_STAY\_0001822-FOMB\_STAY\_0001899; BONY00000000001-BONY00000000134.

**B. The Produced Documents Reflect Withdrawals From the GDB -9758 Account That Did Not Correspond to Deposits Into Any Other Account In the CCDA Flow of Funds.**

10. I, and attorneys and staff working under my supervision, reviewed the bank account statements included in the Produced Documents to identify transactions that appear to reflect transfers from one bank account to another. We matched (by date and amount) debits from one account to credits in another account in order to identify transfers. In some cases, the Produced Documents showed debits from one account that did not appear to correspond to credits to any other account reflected in the Produced Documents.

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<sup>2</sup> The CCDA flow of funds referred to herein is described by the Oversight Board and AAFAF in the Letter from E. McKeen, Esq. to J. Hughes, Esq., *et al.*, dated April 14, 2020, attached hereto as Exhibit 38.

- a. Attached hereto as Exhibit 39 is a true and correct copy of CCDA\_STAY0000010 – CCDA\_STAY0000013, which is a bank account statement for GDB -9758 for September 2015.
- b. Attached hereto as Exhibit 40 is CCDA\_STAY0000036 – CCDA\_STAY0000041, which is a bank account statement for GDB -9758 for February 2016.

11. For example, Ambac could not match and therefore requested clarification as to the transfer details of the transfer out of GDB -9758 on September 22, 2015, in the amount of \$3,100,000, described as “Redacted 2083 TRF FROM IBA.” *See* Letter from J. Hughes, Esq. to E. McKeen, Esq. to E. McKeen, Esq. and M. Mervis, Esq., dated February 26, 2020 at 2 (attached hereto as Exhibit 41). In their March 13, 2020 letter, the Government Parties indicated that they were unable to locate the details of that transfer. *See* Letter from E. McKeen, Esq. to J. Hughes, Esq., *et al.*, dated March 13, 2020 at 2-4 (attached hereto as Exhibit 42). After Ambac renewed its request for information regarding that transfer, the Government Parties responded that they had been unable to locate details concerning the transfer. *See* Letter from E. McKeen, Esq. to J. Hughes, Esq., *et al.*, April 14, 2020, at 5 (attached hereto as Exhibit 38).

## **II. ALL OTHER EXHIBITS APPENDED HERETO ARE TRUE AND CORRECT COPIES.**

12. All other Exhibits attached hereto and not otherwise referenced herein are true and correct copies of the following documents:

- a. Exhibit 43 attached hereto is a true and correct copy of CCDA\_STAY0006780– CCDA\_STAY0006786 which are account-opening documents for GDB -9758.

- b. Exhibit 44 attached hereto is a true and correct copy of the deposition transcript of Timothy H. Ahlberg, dated April 23, 2020.
- c. Exhibit 45 attached hereto is a true and correct copy of the Letter from E. McKeen, Esq. to J. Hughes, Esq., *et al.*, dated March 31, 2020.
- d. Exhibit 46 attached hereto is a true and correct copy of CCDA\_STAY0013795 – CCDA\_STAY0013797 which is a bank account statement for BONY -6334 for January 2015.
- e. Exhibit 47 attached hereto is a true and correct copy of CCDA\_STAY0001814– CCDA\_STAY0001819 which is a bank account statement for Scotiabank -5142 for January 2015.
- f. Exhibit 48 attached hereto is a true and correct copy of the Letter from G. Mainland, Esq. to E. McKeen, Esq. and M. Mervis, Esq., dated February 24, 2020.
- g. Exhibit 49 attached hereto is a true and correct copy of the Tourism Company Board of Directors Resolution No. 06-47 dated March 24, 2020.
- h. Exhibit 50 attached hereto is a true and correct copy of the Puerto Rico Convention Center District Authority Hotel Occupancy Tax Revenue Bonds, Series A Official Statement, dated March 15, 2006.
- i. Exhibit 51 attached hereto is a true and correct copy of an excerpt of the “Redbook” prepared by the United States Government Accountability Office updated March 2016.



### III. EXHIBITS APPENDED TO THE CCDA LIFT-STAY OPENING BRIEF

13. Movants' opening brief appended nineteen exhibits thereto. For the Court's reference, those nineteen exhibits are summarized in the below chart:

Exhibit Number	Document Title
1	Proposed Order Granting Ambac Assurance Corporation, Financial Guaranty Insurance Company, Assured Guaranty Corp., Assured Guaranty Municipal Corp., and the Bank of New York Mellon's Motion Concerning Application of the Automatic Stay to the Revenues Securing CCDA Bonds
2	Draft Complaint for the CCDA Enforcement Action
3	Assignment and Coordination Agreement between the Puerto Rico Tourism Company and the Government Development Bank for Puerto Rico (March 24, 2006)
4	Pledge and Assignment Agreement among the Puerto Rico Tourism Company, the Government Development Bank for Puerto Rico, and JPMorgan Chase Bank, N.A. (March 24, 2006)
5	Trust Agreement between the Puerto Rico Convention Center District Authority and JPMorgan Chase Bank, N.A., as trustee (March 24, 2006)
6	Convention Center District Authority UCC Financing Statement, Declaración 2016001827 (March 16, 2015).
7	Administrative Bulletin EO-2015-046 (November 30, 2015)
8	Act 21-2016, Puerto Rico Emergency Moratorium and Rehabilitation Act § 201(a) (Apr. 6, 2016)
9	Administrative Bulletin EO-2016-31 (June 30, 2016)
10	Act 5-2017, Puerto Rico Financial Emergency and Fiscal Responsibility Act of 2017 §§ 201-203, 206, 208, 211, 301 (Jan. 29, 2017)

Exhibit Number	Document Title
11	Act 26-2017, The Fiscal Plan Compliance Act (Apr. 29, 2017)
12	Press Release, Puerto Rico Fiscal Agency and Financial Advisory Authority, Government Has Earned \$49 Million in Interest Fiscal Year-to-Date (Dec. 5, 2019)
13	Press Release, Puerto Rico Fiscal Agency and Financial Advisory Authority, Puerto Rico Legislature Passes \$8.78B Fiscal 2017 General Fund Budget (July 1, 2016)
14	Financial Oversight and Management Board for Puerto Rico, FY18 Budget (June 30, 2017)
15	Press Release, Financial Oversight and Management Board for Puerto Rico: Oversight Board Submits FY19 Commonwealth Compliant Budget Certified by Unanimous Written Consent (June 30, 2018)
16	Financial Oversight and Management Board for Puerto Rico, FY20 Certified Budget for the Commonwealth of Puerto Rico (June 30, 2019)
17	Puerto Rico Fiscal Agency and Financial Advisory Authority, Fiscal Plan for Puerto Rico (Mar. 13, 2017)
18	Financial Oversight and Management Board for Puerto Rico, 2019 Fiscal Plan for Puerto Rico: Restoring Growth and Prosperity (May 9, 2019)
19	Puerto Rico Department of Treasury, Treasury Single Account ("TSA") FY 2020 Cash Flow As of Dec. 27, 2019 (Dec. 27, 2019)

I declare, under penalty of perjury, that the foregoing statements are true and correct.

Executed: New York, New York  
April 30, 2020

/s/ John J. Hughes, III  
John J. Hughes, III